



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB155]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Transit Protection Program Pier and Support Facilities Project at Naval Base Kitsap Bangor, Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed modification of two incidental harassment authorizations; request for comments.

SUMMARY: NMFS is proposing to modify the incidental harassment authorizations (IHAs) that were issued to the United States Navy (Navy) on September 25, 2020 for the Transit Protection Program (TPP) construction, due to an elevated harbor seal take rate at the nearby Naval Base Kitsap Bangor Service Pier Project that was unanticipated during the initial analysis for these TPP IHAs. NMFS is proposing to modify the TPP project IHAs to increase authorized take by Level A harassment of harbor seal in the Year 1 IHA, and add Level A harassment take of harbor seal to the Year 2 IHA. NMFS is also proposing to revise the shutdown mitigation provisions for harbor seals in the modified IHAs, and adjust the effective dates of both IHAs to accommodate the Navy's plans to delay the project. The monitoring and reporting measures remain the same as prescribed in the initial IHAs, and no additional take was requested for other species. NMFS will consider public comments on the requested modifications prior to making any final decision and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Davis@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHAs), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not

intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

History of Request

On September 25, 2020, NMFS issued two incidental harassment authorizations (IHAs) to the Navy to incidentally harass, by Level A harassment and Level B harassment only, marine mammals during construction activities associated with the Transit Protection Program Pier and Support Facilities Project (TPP project) at Naval Base Kitsap Bangor (Kitsap Bangor) in Silverdale, Washington over two years (85 FR 68291; October 28, 2020). Species authorized for take included killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), and harbor seal (*Phoca vitulina*). The effective dates of those IHAs were July 16, 2021 to January 15, 2022 (Year 1), and July 16, 2022 to January 15, 2023 (Year 2).

NMFS had previously issued an IHA for a separate project at the nearby Kitsap Bangor Service Pier (Service Pier IHA; 83 FR 30406; June 28, 2018) which was subsequently reissued with revised effective dates on July 3, 2019 (reissued Service Pier IHA; 84 FR 31844). On October 14, 2020, NMFS received a request from the Navy for a modification to the Service Pier IHA due to an elevated harbor seal take rate that was unanticipated. A small group of harbor seals (*Phoca vitulina*) repeatedly entered into and remained within the Level A harassment zone, resulting in a take rate that was projected to exceed the authorized limit for this species in the reissued Service Pier IHA (84 FR 31844; July 3, 2019). The Navy felt that without an increase in authorized take of harbor seal, they would be forced to repeatedly shut down whenever animals entered into specified Level A harassment zones, which would likely prolong the duration of in-water construction activities and add increased costs to the project. NMFS published a notice of proposed modification of the reissued Service Pier IHA with a request for comments on November 24, 2020 (85 FR 74989), and issued a modified IHA to the Navy on December 30, 2020 (modified Service Pier IHA; 85 FR 86538) with an increase in authorized Level A harassment of harbor seal and revised shutdown mitigation provisions for harbor seals. The monitoring and reporting measures remained the same as prescribed in the reissued Service Pier IHA, and no additional take was authorized for other species.

Following issuance of the modified Service Pier IHA (85 FR 86538; December 30, 2020), the Navy expressed similar concern regarding the potential for greater-than-anticipated harbor seal activity at the TPP project site, and requested modification of the TPP project IHAs (85 FR 68291; October 28, 2020) given the new harbor seal information and sound source verification (SSV) results from the Service Pier project. Further, the Navy expects to delay the project to accommodate various regulatory schedules. The Navy may begin work during the current in-water work window (July 16,

2021 to January 15, 2022) or the following in-water work window (July 16, 2022 to January 15, 2023).

NMFS is proposing to modify the TPP project IHAs to increase authorized take by Level A harassment of harbor seal in the Year 1 IHA, and add authorized take by Level A harassment of harbor seal in the Year 2 IHA. NMFS is also proposing to revise the shutdown mitigation provisions for harbor seals in the modified IHAs, and adjust the effective dates of the IHAs to accommodate the Navy's planned project delays. The monitoring and reporting measures remain the same as prescribed in the initial IHAs, and no additional take is requested or proposed for species other than harbor seal.

Description of the Proposed Activity and Anticipated Impacts

The modified IHAs would include the same construction activities (*i.e.* impact pile driving, vibratory pile driving, vibratory pile removal) in the same locations that were described in the initial IHAs. The monitoring and reporting measures remain the same as prescribed in the initial IHAs, while revisions to the required mitigation measures have been proposed. NMFS refers the reader to the documents related to the initial IHAs issued on September 25, 2020 (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-transit-protection-program-pier-and-support-facilities>) for more detailed description of the project activities. Other relevant documents include the notice of proposed IHAs and request for comments (85 FR 48206; August 10, 2020) and notice of issued IHAs (85 FR 68291, October 28, 2020).

Detailed Description of the Action

A detailed description of the construction activities is found in these previous documents. The location, time of year, and nature of the activities, including the types of piles and methods of installation and removal are identical to those described in the previous documents. However, as noted in the **History of Request** section, the Navy

expects to delay the project to accommodate various regulatory schedules, and the Navy may begin work during the current in-water work window (July 16, 2021 to January 15, 2022) or the following in-water work window (July 16, 2022 to January 15, 2023).

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to these modified IHAs as well. In addition, NMFS has reviewed the 2020 Stock Assessment Reports (Carretta *et al.*, 2021, Muto *et al.*, 2021), information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the initial IHAs. (However, the stock abundance of the West Coast Transient stock of killer whale increased from 243 to 349, Potential Biological Removal increased from 2.4 to 3.5, and annual mortality and serious injury increased from 0 to 0.4 animals. Additionally, the 2020 Pacific SAR (Carretta *et al.*, 2021) states that the annual mortality and serious injury of Eastern U.S. Steller sea lions is 112 animals, rather than 113 stated in the initial IHAs.)

Potential Effects of Specified Activities on Marine Mammals and their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the initial IHAs, which remains applicable to the issuance of these modified IHA. With the exception of harbor seal exposures, there is no new information on potential effects.

For harbor seals, observations during monitoring for construction at the Kitsap Bangor Service Pier (draft report available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>) indicated that nine individuals (previously thought to be 8 at the time that the reissued Service Pier IHA was modified (85 FR 86538; December 30, 2020)), were regularly present in relatively close proximity to the pile

driving operations at the Service Pier. NMFS modified the reissued Service Pier IHA (85 FR 86538; December 30, 2020), and given the close proximity of the TPP site to the Service Pier site, there is a higher likelihood than initially considered for the TPP IHAs that these same individual harbor seals may incur permanent threshold shift (PTS) at a low-moderate level due to potential repeated, longer-duration exposure to higher levels of sound. (Of note, NMFS has issued a renewal IHA for the Navy's work at the Service Pier (86 FR 45963; August 17, 2021), so these seals could all occur in close proximity to construction at either site, some could occur in close proximity to construction at both sites, or they may no longer express interest in either project.)

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of issuance of the initial TPP IHAs (85 FR 68291; October 28, 2020). The types and sizes of piles, installation methods, and marine mammal stocks taken remain unchanged from the initial IHAs. The number of authorized takes is also identical with the exception of harbor seal.

The in-water work window at Kitsap Bangor (when Endangered Species Act (ESA)-listed salmonids are least likely to be present) runs from July 16 through January 15. Pile installation for the Service Pier project started September 4, 2020 with both vibratory and impact pile drivers being employed.

During monitoring for the Service Pier construction, protected species observers (PSOs) identified nine harbor seals that frequented the project area (sometimes entering and remaining within the Level A harassment zone) and became habituated to the in-water construction work. (Note that at the time of the modification to the Service Pier IHA, NMFS was aware of "at least eight" identified harbor seals, but since then, the Navy has submitted a preliminary monitoring report identifying nine different harbor seals, and the discussion below reflects the latest information as described in the Navy's

preliminary monitoring report for construction at the Service Pier site.) These seals included five pups and four adults which were all individually identified. Two of the pups were seen in the project area on almost a daily basis, and were observed playing in the bubble curtain ring. (Three seals were identified as occurring in the project area almost daily at the time of the modification to the Service Pier IHA.) PSOs recorded seals occasionally exhibiting behaviors such as startle response and fast swimming away from the activity.

These frequent harbor seal observations resulted in excessive shutdowns, and due to these frequent shutdowns, pile installation fell behind schedule. Further, based on the remaining in-water working days for the Service Pier project, the Navy expected, and NMFS concurred, that they would likely exceed authorized take. Additionally, SSV that was conducted during the initial Service Pier project work indicated that the Level A harassment zones for impact driving of 36-inch piles were too large, and modification of those zones was warranted. Please see the notice of the issued, modified Service Pier IHA (85 FR 86538; December 30, 2020) for additional discussion of that modification.

For the TPP IHAs, the Navy used NMFS' User Spreadsheet to calculate the Level A harassment isopleths associated with project activities. Inputs to the model for the initial IHAs are shown in Table 1. Using this model, NMFS calculated a 158-m Level A harassment isopleth for phocids (*i.e.* harbor seals) during impact driving of 36-inch steel piles.

Table 1-- Inputs for Determining Distances to Cumulative PTS Thresholds Used in the Initial TPP IHAs

Pile Size and Installation Method	Spreadsheet Tab Used	Weighting Factor Adjustment (kHz)	Source Level	Number of Piles Within 24-h Period	Duration to Drive a Single Pile (minutes)	Number of Strikes Per Pile	Propagation (xLogR)	Distance from Source Level Measurement (meters)
36-inch Steel-Impact	E.1) Impact	2	173 dB SEL ^a	4	30	400	15	10

	pile driving							
24-inch Steel-Vibratory	A.1) Vibratory pile driving	2.5	161 dB RMS	5 ^b	60			
30-inch Steel-Vibratory			166 dB RMS					
36-inch Steel-Vibratory			166 dB RMS					

^a This source level includes an 8dB reduction from the use of a bubble curtain.

^b The Navy expects to install only 4 piles per day using a vibratory hammer; however, for purposes of calculating the Level A harassment zones, they have conservatively assumed that they may install 5 piles per day.

The Navy conducted SSV in September 2020 at the Service Pier site. Testing was conducted during impact driving of four 36-inch steel piles both with and without bubble curtains. Given the close proximity of the Service Pier site to the TPP site, NMFS determined that it is appropriate to apply the SSV data from the Service Pier site to the TPP site as well. Therefore, NMFS applied the same source level and propagation loss recorded for impact driving of 36-inch piles at the Service Pier site to the Year 1 TPP IHA in this modification. NMFS inserted recorded SSV values for 36-inch piles into the user spreadsheet. The acoustic data for each pile strike were frequency weighted for phocids following NMFS guidance (2016) and then averaged. This resulted in an average phocid weighted single strike SEL of 177 dB re 1μPa_{2s} at 10 m. Using the measured transmission loss at the Service Pier site of 25 (far field) and an assumption of 1,600 strikes per day (same as the initial TPP IHAs- 4 piles per day, 400 strikes per pile), the resulting isopleth for phocids was 92 meters (m; Wood *et al.*, 2020). Therefore, NMFS has updated the Level A harassment isopleth for phocids during impact driving of 36-inch piles in the TPP Year 1 IHA to 92 m. (Please see the notice of the issued, modified Service Pier IHA (85 FR 86538; December 30, 2020) for additional discussion regarding how this revised distance was applied to the take estimate for that IHA.) While vibratory is the preferred method of installation, impact driving was needed almost daily at the

Service Pier project site, largely due to sediment conditions, and given the close proximity of the Service Pier site to the TPP site, NMFS expects that this could also occur at the TPP site.

Even with the reduction of the phocids Level A harassment isopleth during impact pile driving from 158 m to 92 m, additional Level A harassment takes of harbor seals are warranted, as the Service Pier preliminary monitoring report states that two habituated individuals were sighted almost daily at the project site, and frequently approached in close proximity to the piles and barges during vibratory pile driving (including within the 30 m shutdown zone for that project).

The Service Pier preliminary monitoring report states that nine individually identifiable harbor seals frequented the project site. These individuals are believed to be habituated by varying degrees to in-water construction activities. Some of them regularly enter and remain within Level A harassment and shutdown zones, and as noted above, two of them (pups) were sighted almost daily at the project site. The remainder of the group of nine are observed less frequently, but still regularly. All nine seals were observed in the initial Service Pier Level A harassment zone on some occasions, with six or more observations on numerous days.

We also note that the area ensonified above the Level A harassment threshold for impact installation of 36-inch piles in this proposed modified TPP Year 1 IHA has been reduced by approximately one third from the initial IHA, and the reissued Service Pier IHA. Based on the Service Pier preliminary monitoring report, NMFS and the Navy agreed that an increase of takes by Level A harassment, to 4 takes per day during Year 1, and 2 takes per day during Year 2, is appropriate. Therefore, NMFS is proposing to authorize 320 takes by Level A harassment during Year 1 (4 takes x 80 in-water work days), and 20 takes by Level A harassment during Year 2 (2 takes x 10 in-water work days). This would allow for one take per day of each of the seals identified as visiting the

Service Pier project site almost daily during Year 1 and Year 2, as well as two additional takes by Level A harassment that could be incurred by any of the other seven individuals if two of them entered the shutdown zone each day prior to detection, or a larger group entered every few days.

As was the case for the initial IHAs, no impact pile driving is planned for Year 2, and the Level A harassment zones are smaller during Year 2. Further, while some of the habituated seals at the Service Pier site did come very close to the pile driving site (and even into the bubble curtain deployed for that project), many of the observations within the Level A harassment zone were farther from the pile driving location. Additionally, for Year 2 of the TPP project, harbor seals are unlikely to incur PTS during vibratory driving of 24-inch steel piles (half of the piles planned for installation in Year 2), given that the Level A harassment zone for phocids is 12 m (24-inch piles), and the Navy would have to shut down if any animal enters the area within 10 m of the pile driving site (though, as noted below, the Navy generally plans to shut down for most harbor seals during vibratory driving at 15 m for 24-inch piles). Therefore, during Year 2 of the TPP project, they are only likely to incur PTS during vibratory driving of 30-inch steel piles, and even then, the zone is small (26 m). Most of the takes by Level A harassment in Year 1 and Year 2 are anticipated to occur to a smaller number of habituated individuals.

The total numbers of incidental takes by Level A harassment and Level B harassment, including proposed updated Level A harassment take of harbor seal and as a percentage of population, is shown in Table 2 below. The total number of takes (Level A harassment and Level B harassment combined) has not changed for harbor seal because the additional takes by Level A harassment are assumed to occur to animals that would have previously been counted as taken by Level B harassment. Therefore, NMFS is proposing to reduce authorized Level B harassment take of harbor seal from 2,800 to 2,500 during Year 1, and from 350 to 330 in Year 2.

Table 2 —Total Numbers of Authorized Takes by Level A and Level B Harassment and as a Percentage of Population

Species	Stock	Stock Abundance	Year 1			Level A Harassment Take	Year 2	
			Level A Harassment Take	Level B Harassment Take	Total Take (percent of stock)		Level B Harassment Take (percent of stock)	Total Take (percent of stock)
Killer whale	West Coast Transient	243	0	12	12 (4.9)	0	12	12 (4.9)
Harbor porpoise	Washington Inland Waters	11,233		1,728	1,728 (15.4)		216	216 (1.9)
Steller sea lion	Eastern U.S.	43,201		320	320 (0.7)		40	40 (0.1)
California sea lion	United States	257,606		4,800	4,800 (1.9)		600	600 (0.2)
Harbor seal	Washington Inland Waters, Hood Canal	Unknown	320	2,500	2,820 (Unknown)	20	330	350 (Unknown)

As stated in the notice of issuance of the initial TPP IHAs (85 FR 68291; October 28, 2020), no current abundance estimate is available for harbor seals. The most recent SAR abundance estimate for harbor seals in Washington inland waters is from 1999, which estimated 1,088 harbor seals in the Washington Inland Waters, Hood Canal stock. It is generally believed that harbor seal populations have increased significantly since (*e.g.*, Mapes, 2013). Jefferson *et al.*, (2017) estimates an in-water abundance of 2,009 harbor seals in the Hood Canal region. The in-water abundance provided in Jefferson *et al.* (2017) did not provide an abundance or correction factor for animals hauled out of the water. Huber *et al.*, 2001 estimated a correction factor of 1.53, but it is important to note

that this correction factor applies for counts of hauled-out animals (*e.g.*, animals hauled out multiplied by the correction factor for animals in-water = total abundance). Therefore, it is appropriate to apply this as a “reverse” correction factor ($2,009/0.53 = 3,791$) to account for animals hauled out. Therefore, the total stock abundance estimate is equal to the sum of the in-water abundance plus the estimated abundance of hauled-out animals ($2,009 + 3,791 = 5,800$ total Hood Canal harbor seals).

The estimated instances of take of the Washington Inland Waters, Hood Canal stock of harbor seals in Year 1 appear high when compared to the latest SAR stock abundance from 1999 or the stock abundance of 5,800 harbor seals described above. However, when other qualitative factors are used to inform an assessment of the likely number of individual harbor seals taken, the resulting numbers are considered small in Year 1 and Year 2.

As stated in the notice of the initial TPP IHAs (85 FR 68291; October 28, 2020), we anticipate that estimated takes of harbor seals are likely to occur only within some portion of the relevant population, rather than to animals from the stock as a whole. For example, takes anticipated to occur at Kitsap Bangor are expected to accrue to the same individual seals that routinely occur on haulouts at these locations, rather than occurring to new seals on each construction day. In summary, harbor seals taken as a result of the specified activities are expected to comprise only a limited portion of individuals comprising the overall relevant stock abundance. Therefore, we preliminarily find that small numbers of harbor seals will be taken relative to the population size of the Hood Canal stock of harbor seal in Year 1 and Year 2.

Description of Mitigation, Monitoring and Reporting Measures

With the exception of the revised shutdown provisions for harbor seals discussed below, the monitoring, and reporting measures described here are identical to those included in the initial TPP IHAs (85 FR 68291; October 28, 2020).

In addition to the measures described later in this section, the Navy will employ the following mitigation measures:

- For in-water construction, heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions;
- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the Level B harassment zone, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or the observation time period, as indicated in condition 4(e) of the IHAs, has elapsed.

The following mitigation measures apply to the Navy's in-water construction activities.

Pile Driving Energy Attenuator— The Navy will use a marine pile-driving energy attenuator (*i.e.*, air bubble curtain system) during impact pile driving (Year 1 only). The use of sound attenuation will reduce SPLs and the size of the zones of influence for Level A harassment and Level B harassment. Bubble curtains will meet the following requirements:

- The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column;

- The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact; and
- Air flow to the bubblers must be balanced around the circumference of the pile.

Soft-Start— During impact driving (Year 1 only) the Navy is required to initiate sound from the hammer at reduced energy followed by a 30 second waiting period, then two subsequent reduced energy strike sets. A soft-start procedure will be implemented at the start of each day's impact pile driving or any time following cessation of impact pile driving for a period of thirty minutes or longer.

Establishment of Shutdown Zones- The Navy will establish shutdown zones for all pile driving and removal activities. All shutdown zones remain the same as those included in the initial IHAs, except for the shutdown zone for harbor seals during impact pile driving of 36-inch steel piles (applicable to Year 1 IHA only) and vibratory driving of 24-inch steel piles (applicable to Year 2 IHA only), for which the modifications are described below.

As stated in the notice of the initial TPP IHAs (85 FR 68291; October 28, 2020), in addition to the shutdown zones listed in Table 3, the Navy plans to shut down pile driving if a cetacean is observed within the Level B harassment zone.

The Navy conducted a SSV study during construction at the Service Pier (85 FR 86538; December 30, 2020). Using results from that SSV study, NMFS calculated a revised Level A harassment isopleth for harbor seals during impact pile driving of 36-inch piles of 92 m rather than 158 m as calculated using proxy source levels in the initial TPP Year 1 IHA (85 FR 68291; October 28, 2020). Therefore, at the Navy's request and

with concurrence from NMFS, the shutdown zone for harbor seals has been reduced from 160 m to 95 m during impact driving of 36-inch steel piles.

Table 3 — Shutdown Zones (m) During Pile Installation and Removal

	Cetaceans	Phocids (Harbor Seal Only)	Otariids
Vibratory Driving of 24- inch Piles	65	15	10
Vibratory Driving of 30- inch and 36- inch Piles	65	30	10
All Impact Pile Driving	355	95	15

Further, given the Navy's practicability concerns regarding frequent shutdowns, NMFS reduced the shutdown zone for vibratory driving of 24-inch piles to 15 m (applicable to Year 2 only). This shutdown zone was previously 30 m (for all vibratory pile driving). A 15 m shutdown zone still includes the entire 12 m Level A harassment zone for phocids. The shutdown zones and the Level A harassment and Level B harassment isopleths for all other pile driving and species groups remain unchanged from the notice of the issuance of the initial IHAs (85 FR 68291; October 28, 2020).

The reduced size of the shutdown zones for harbor seals discussed above, along with the increase in authorized take by Level A harassment should prevent the Navy from exceeding its authorized take limit for this species. However, even with a 95-m shutdown zone during impact driving and a 15 or 30-m shutdown zone during vibratory driving, the Navy may continue to experience frequent work stoppages due to frequent visits by habituated harbor seals. This could result in schedule delays and cost overruns and could potentially require an extra year of in-water construction activities. Therefore, it is not practicable for the Navy to shut down or delay pile driving activities every time a harbor seal is observed in a shutdown zone.

Therefore, shutdowns would be initiated for harbor seals when observed approaching or entering the Level A harassment zones as described above, except when one or more of the two habituated harbor seals identified as daily visitors approaches or enters an established shutdown zone. In such cases, a single take by Level A harassment shall be recorded for each individual seal for the entire day, and operations will be allowed to continue without interruption. The behavior of these two daily visitors will be monitored and recorded as well as the duration of time spent within the harassment zones. This information will be recorded individually for each of the two seals. If any other seals, including the seven habituated seals identified as frequent visitors, approaches or enters into a Level A harassment zone, shutdown must occur.

The minimum shutdown zone during any pile driving activity will always be at least 10 m. Shutdown is mandatory whenever an animal is within 10 m of pile driving location regardless of the exception noted above. In such instances, in-water pile driving operations may only continue after 15 minutes have passed or the animal is seen heading away from the 10-m shutdown zone.

The revisions in the mitigation, including the shutdown exception for habituated harbor seals, are necessary to allow for the practicable completion of the Navy's specified activities. Although the predicted Level A harassment take numbers are higher than initially projected because of the behavior of the eight habituated animals, the likelihood of Level A harassment take of other individuals is lower than initially expected because the Level A harassment zone is smaller than initially predicted based on incorporation of the Service Pier SSV data. NMFS has considered the revised mitigation measures for harbor seals and determined that they will effect the least practicable adverse impact on harbor seals and their habitat. Nothing has changed since the initial IHAs for other species or stocks, and our analysis and conclusions remain the same.

PSOs- The placement of PSOs during all pile driving and removal activities are described in detail in the **Monitoring and Reporting** section of the notice of the initial IHAs (85 FR 68291; October 28, 2020) and remain unchanged. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.*, fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Monitoring for Level A and Level B Harassment- The Navy will monitor the Level B harassment zones (areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory pile driving) to the extent practicable and the Level A harassment zones. Placement of PSOs on the pier, shoreline, and a vessel (see **Monitoring and Reporting** section in the notice of the initial IHAs (85 FR 68291; October 28, 2020)) around the TPP site will allow PSOs to observe marine mammals within the Level B harassment zones.

Pre-activity Monitoring- Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and Level A harassment and Level B harassment zones for a period of 30 minutes. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin, and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence.

Reporting — PSOs must record specific information as described in the **Federal Register** notice of the issuance of the initial IHAs (85 FR 68291; October 28, 2020). Within 90 days after completion of pile driving and removal activities, the Navy must

provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that: 1) the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHAs (if issued), such as an injury, serious injury or mortality; 2) a live marine mammal is found stranded, whether on shore or in or on any structure or vessel; or 3) personnel involved in the construction activities discover an injured or dead marine mammal, the Navy will follow the protocols described in the IHAs.

Based on our evaluation of the applicant's measures in consideration of the increased estimated take for harbor seals, as well as the modified shutdown provisions for harbor seals, NMFS has re-affirmed the determination that the required mitigation measures provide the means effecting the least practicable impact on harbor seals and their habitat.

Preliminary Determinations

With the exception of the revised harbor seal shutdown provisions, the Navy's in-water construction activities as well as monitoring and reporting requirements are unchanged from those in the initial IHAs. The effects of the activity on the affected species and stocks, taking into consideration the modified mitigation and related monitoring measures, remain unchanged, notwithstanding the increase to the authorized amount of harbor seal take by Level A harassment. The nature of the pile driving project precludes the likelihood of serious injury or mortality. While injury could occur in a small group of habituated animals (nine or fewer), it would likely be limited to PTS at lower frequencies where pile driving energy is concentrated, and unlikely to result in

impacts to individual fitness, reproduction, or survival of these individuals whose best hearing is in a higher frequency range.

With approximately 80 in-water construction days during Year 1 and 10 in-water construction days in Year 2, NMFS is proposing to increase authorized harbor seal take by Level A harassment to 320 in Year 1, and 20 in Year 2. Even in consideration of the increased numbers of take by Level A harassment, the impacts of these exposures, as noted above, may result in moderate injury to a limited number of harbor seals but are not expected to accrue to the degree that the fitness of any individuals is markedly impacted. Further, given the small number of individuals potentially impacted in this manner, no impacts on annual rates of recruitment or survival are likely to result.

Separately, as described previously, the increase in Level A harassment take corresponds to a commensurate decrease in the predicted number of Level B harassment, and the total number of takes remains unchanged. Therefore, in consideration of this, and the harbor seal stock abundance information discussed in the *Estimated Take* section above, we re-affirm that small numbers of harbor seals will be taken relative to the population size of the Washington Inland Waters, Hood Canal stock of harbor seal.

In conclusion, there is no new information suggesting that our negligible impact analysis or finding for harbor seals should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily reaffirmed the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) small numbers of marine mammals will be taken relative to the affected stock abundances; (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes, as no relevant subsistence uses of

marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the modification of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the modified IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this document prior to concluding our NEPA process or making a final decision on the IHA requests.

Proposed Authorization

NMFS proposes to modify the IHAs to the Navy for in-water construction associated with the TPP project on Naval Base Kitsap Bangor, Washington. The only changes are increases in the authorized take of harbor seal take by Level A harassment from 20 to 320 in Year 1, and 0 to 20 in Year 2, changes to the shutdown requirements

for harbor seals in both the Year 1 and Year 2 IHAs, and changes to the effective dates of the IHAs. Drafts of the proposed modified IHAs can be found at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Request for Public Comments

We request comment on our proposed modification of the IHAs for the Navy's in-water construction activities associated with the TPP project. We also request comment on the potential for renewal of these modified IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorizations or subsequent Renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:
 - (1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of

the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: August 31, 2021.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2021-19146 Filed: 9/3/2021 8:45 am; Publication Date: 9/7/2021]